

AMENDED IN ASSEMBLY JULY 8, 2015

AMENDED IN ASSEMBLY JUNE 23, 2015

AMENDED IN SENATE APRIL 28, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 453

Introduced by Senator Pan

February 25, 2015

An act to amend Section 1370 of the Penal Code, relating to prisons.

LEGISLATIVE COUNSEL'S DIGEST

SB 453, as amended, Pan. Prisons: involuntary medication.

Existing law provides that if a defendant in a criminal proceeding is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent. Existing law provides that the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, as directed by the State Department of State Hospitals, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified. Existing law further specifies commitment proceedings to include circumstances for the voluntary and involuntary administration of antipsychotic medication.

Under existing law, if consent for antipsychotic medication is withdrawn or if the treating psychiatrist later determines that antipsychotic medication is medically necessary and appropriate, the treating psychiatrist is required to make efforts to obtain consent for that medication. Existing law provides that if the treating psychiatrist

certifies that antipsychotic medication has become medically necessary and appropriate for the defendant, antipsychotic medication may be administered to the defendant for a maximum of 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment.

This bill would authorize the treating psychiatrist, if he or she determines that there is a need, based on preserving rapport with the patient or preventing harm, to request that the facility medical director designate another psychiatrist to act in the place of the treating psychiatrist for purposes of involuntary medication. If the medical director of the facility designates another psychiatrist to act, this bill would require the treating psychiatrist to brief the acting psychiatrist of the relevant facts of the case and would require the acting psychiatrist to examine the patient prior to the hearing.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1370 of the Penal Code is amended to
2 read:
3 1370. (a) (1) (A) If the defendant is found mentally
4 competent, the criminal process shall resume, the trial on the
5 offense charged or hearing on the alleged violation shall proceed,
6 and judgment may be pronounced.
7 (B) If the defendant is found mentally incompetent, the trial,
8 the hearing on the alleged violation, or the judgment shall be
9 suspended until the person becomes mentally competent.
10 (i) In the meantime, the court shall order that the mentally
11 incompetent defendant be delivered by the sheriff to a state hospital
12 for the care and treatment of the mentally disordered, as directed
13 by the State Department of State Hospitals, or to any other available
14 public or private treatment facility, including a county jail treatment
15 facility or the community-based residential treatment system
16 established pursuant to Article 1 (commencing with Section 5670)
17 of Chapter 2.5 of Part 2 of Division 5 of the Welfare and
18 Institutions Code if the facility has a secured perimeter or a locked
19 and controlled treatment facility, approved by the community

1 program director that will promote the defendant's speedy
2 restoration to mental competence, or placed on outpatient status
3 as specified in Section 1600.

4 (ii) However, if the action against the defendant who has been
5 found mentally incompetent is on a complaint charging a felony
6 offense specified in Section 290, the prosecutor shall determine
7 whether the defendant previously has been found mentally
8 incompetent to stand trial pursuant to this chapter on a charge of
9 a Section 290 offense, or whether the defendant is currently the
10 subject of a pending Section 1368 proceeding arising out of a
11 charge of a Section 290 offense. If either determination is made,
12 the prosecutor shall so notify the court and defendant in writing.
13 After this notification, and opportunity for hearing, the court shall
14 order that the defendant be delivered by the sheriff to a state
15 hospital, as directed by the State Department of State Hospitals,
16 or other secure treatment facility for the care and treatment of the
17 mentally disordered unless the court makes specific findings on
18 the record that an alternative placement would provide more
19 appropriate treatment for the defendant and would not pose a
20 danger to the health and safety of others.

21 (iii) If the action against the defendant who has been found
22 mentally incompetent is on a complaint charging a felony offense
23 specified in Section 290 and the defendant has been denied bail
24 pursuant to subdivision (b) of Section 12 of Article I of the
25 California Constitution because the court has found, based upon
26 clear and convincing evidence, a substantial likelihood that the
27 person's release would result in great bodily harm to others, the
28 court shall order that the defendant be delivered by the sheriff to
29 a state hospital for the care and treatment of the mentally
30 disordered, as directed by the State Department of State Hospitals,
31 unless the court makes specific findings on the record that an
32 alternative placement would provide more appropriate treatment
33 for the defendant and would not pose a danger to the health and
34 safety of others.

35 (iv) The clerk of the court shall notify the Department of Justice
36 in writing of ~~any~~ a finding of mental incompetence with respect
37 to a defendant who is subject to clause (ii) or (iii) for inclusion in
38 his or her state summary criminal history information.

39 (C) Upon the filing of a certificate of restoration to competence,
40 the court shall order that the defendant be returned to court in

1 accordance with Section 1372. The court shall transmit a copy of
2 its order to the community program director or a designee.

3 (D) A defendant charged with a violent felony may not be
4 delivered to a state hospital or treatment facility pursuant to this
5 subdivision unless the state hospital or treatment facility has a
6 secured perimeter or a locked and controlled treatment facility,
7 and the judge determines that the public safety will be protected.

8 (E) For purposes of this paragraph, “violent felony” means an
9 offense specified in subdivision (c) of Section 667.5.

10 (F) A defendant charged with a violent felony may be placed
11 on outpatient status, as specified in Section 1600, only if the court
12 finds that the placement will not pose a danger to the health or
13 safety of others. If the court places a defendant charged with a
14 violent felony on outpatient status, as specified in Section 1600,
15 the court shall serve copies of the placement order on defense
16 counsel, the sheriff in the county where the defendant will be
17 placed, and the district attorney for the county in which the violent
18 felony charges are pending against the defendant.

19 (2) Prior to making the order directing that the defendant be
20 committed to the State Department of State Hospitals or other
21 treatment facility or placed on outpatient status, the court shall
22 proceed as follows:

23 (A) The court shall order the community program director or a
24 designee to evaluate the defendant and to submit to the court within
25 15 judicial days of the order a written recommendation as to
26 whether the defendant should be required to undergo outpatient
27 treatment, or be committed to the State Department of State
28 Hospitals or to any other treatment facility. A person shall not be
29 admitted to a state hospital or other treatment facility or placed on
30 outpatient status under this section without having been evaluated
31 by the community program director or a designee. The community
32 program director or designee shall evaluate the appropriate
33 placement for the defendant between the State Department of State
34 Hospitals, a county jail treatment facility, or the community-based
35 residential treatment system based upon guidelines provided by
36 the State Department of State Hospitals.

37 (B) The court shall hear and determine whether the defendant
38 lacks capacity to make decisions regarding the administration of
39 antipsychotic medication. The court shall consider opinions in the
40 reports prepared pursuant to subdivision (a) of Section 1369, as

1 applicable to the issue of whether the defendant lacks capacity to
2 make decisions regarding the administration of antipsychotic
3 medication, and shall proceed as follows:

4 (i) The court shall hear and determine whether any of the
5 following is true:

6 (I) The defendant lacks capacity to make decisions regarding
7 antipsychotic medication, the defendant's mental disorder requires
8 medical treatment with antipsychotic medication, and, if the
9 defendant's mental disorder is not treated with antipsychotic
10 medication, it is probable that serious harm to the physical or
11 mental health of the patient will result. Probability of serious harm
12 to the physical or mental health of the defendant requires evidence
13 that the defendant is presently suffering adverse effects to his or
14 her physical or mental health, or the defendant has previously
15 suffered these effects as a result of a mental disorder and his or
16 her condition is substantially deteriorating. The fact that a
17 defendant has a diagnosis of a mental disorder does not alone
18 establish probability of serious harm to the physical or mental
19 health of the defendant.

20 (II) The defendant is a danger to others, in that the defendant
21 has inflicted, attempted to inflict, or made a serious threat of
22 inflicting substantial physical harm on another while in custody,
23 or the defendant had inflicted, attempted to inflict, or made a
24 serious threat of inflicting substantial physical harm on another
25 that resulted in his or her being taken into custody, and the
26 defendant presents, as a result of mental disorder or mental defect,
27 a demonstrated danger of inflicting substantial physical harm on
28 others. Demonstrated danger may be based on an assessment of
29 the defendant's present mental condition, including a consideration
30 of past behavior of the defendant within six years prior to the time
31 the defendant last attempted to inflict, inflicted, or threatened to
32 inflict substantial physical harm on another, and other relevant
33 evidence.

34 (III) The people have charged the defendant with a serious crime
35 against the person or property, involuntary administration of
36 antipsychotic medication is substantially likely to render the
37 defendant competent to stand trial, the medication is unlikely to
38 have side effects that interfere with the defendant's ability to
39 understand the nature of the criminal proceedings or to assist
40 counsel in the conduct of a defense in a reasonable manner, less

1 intrusive treatments are unlikely to have substantially the same
2 results, and antipsychotic medication is in the patient's best medical
3 interest in light of his or her medical condition.

4 (ii) If the court finds any of the conditions described in clause
5 (i) to be true, the court shall issue an order authorizing involuntary
6 administration of antipsychotic medication to the defendant when
7 and as prescribed by the defendant's treating psychiatrist at any
8 facility housing the defendant for purposes of this chapter. The
9 order shall be valid for no more than one year, pursuant to
10 subparagraph (A) of paragraph (7). The court shall not order
11 involuntary administration of psychotropic medication under
12 subclause (III) of clause (i) unless the court has first found that the
13 defendant does not meet the criteria for involuntary administration
14 of psychotropic medication under subclause (I) of clause (i) and
15 does not meet the criteria under subclause (II) of clause (i).

16 (iii) In all cases, the treating hospital, facility, or program may
17 administer medically appropriate antipsychotic medication
18 prescribed by a psychiatrist in an emergency as described in
19 subdivision (m) of Section 5008 of the Welfare and Institutions
20 Code.

21 (iv) If the court has determined that the defendant has the
22 capacity to make decisions regarding antipsychotic medication,
23 and if the defendant, with advice of his or her counsel, consents,
24 the court order of commitment shall include confirmation that
25 antipsychotic medication may be given to the defendant as
26 prescribed by a treating psychiatrist pursuant to the defendant's
27 consent. The commitment order shall also indicate that, if the
28 defendant withdraws consent for antipsychotic medication, after
29 the treating psychiatrist complies with the provisions of
30 subparagraph (C), the defendant shall be returned to court for a
31 hearing in accordance with subparagraphs (C) and (D) regarding
32 whether antipsychotic medication shall be administered
33 involuntarily.

34 (v) If the court has determined that the defendant has the
35 capacity to make decisions regarding antipsychotic medication
36 and if the defendant, with advice from his or her counsel, does not
37 consent, the court order for commitment shall indicate that, after
38 the treating psychiatrist complies with the provisions of
39 subparagraph (C), the defendant shall be returned to court for a
40 hearing in accordance with subparagraphs (C) and (D) regarding

1 whether antipsychotic medication shall be administered
2 involuntarily.

3 (vi) ~~Any~~A report made pursuant to paragraph (1) of subdivision
4 (b) shall include a description of ~~any~~ antipsychotic medication
5 administered to the defendant and its effects and side effects,
6 including effects on the defendant's appearance or behavior that
7 would affect the defendant's ability to understand the nature of
8 the criminal proceedings or to assist counsel in the conduct of a
9 defense in a reasonable manner. During the time the defendant is
10 confined in a state hospital or other treatment facility or placed on
11 outpatient status, either the defendant or the people may request
12 that the court review any order made pursuant to this subdivision.
13 The defendant, to the same extent enjoyed by other patients in the
14 state hospital or other treatment facility, shall have the right to
15 contact the patients' rights advocate regarding his or her rights
16 under this section.

17 (C) If the defendant consented to antipsychotic medication as
18 described in clause (iv) of subparagraph (B), but subsequently
19 withdraws his or her consent, or, if involuntary antipsychotic
20 medication was not ordered pursuant to clause (v) of subparagraph
21 (B), and the treating psychiatrist determines that antipsychotic
22 medication has become medically necessary and appropriate, the
23 treating psychiatrist shall make efforts to obtain informed consent
24 from the defendant for antipsychotic medication. If informed
25 consent is not obtained from the defendant, and the treating
26 psychiatrist is of the opinion that the defendant lacks capacity to
27 make decisions regarding antipsychotic medication based on the
28 conditions described in subclause (I) or (II) of clause (i) of
29 subparagraph (B), the treating psychiatrist shall certify whether
30 the lack of capacity and any applicable conditions described above
31 exist. That certification shall contain an assessment of the current
32 mental status of the defendant and the opinion of the treating
33 psychiatrist that involuntary antipsychotic medication has become
34 medically necessary and appropriate.

35 (D) (i) If the treating psychiatrist certifies that antipsychotic
36 medication has become medically necessary and appropriate
37 pursuant to subparagraph (C), antipsychotic medication may be
38 administered to the defendant for not more than 21 days, provided,
39 however, that, within 72 hours of the certification, the defendant
40 is provided a medication review hearing before an administrative

1 law judge to be conducted at the facility where the defendant is
2 receiving treatment. The treating psychiatrist shall present the case
3 for the certification for involuntary treatment and the defendant
4 shall be represented by an attorney or a patients' rights advocate.
5 The attorney or patients' rights advocate shall be appointed to meet
6 with the defendant no later than one day prior to the medication
7 review hearing to review the defendant's rights at the medication
8 review hearing, discuss the process, answer questions or concerns
9 regarding involuntary medication or the hearing, assist the
10 defendant in preparing for the hearing and advocating for his or
11 her interests at the hearing, review the panel's final determination
12 following the hearing, advise the defendant of his or her right to
13 judicial review of the panel's decision, and provide the defendant
14 with referral information for legal advice on the subject. The
15 defendant shall also have the following rights with respect to the
16 medication review hearing:

- 17 (I) To be given timely access to the defendant's records.
- 18 (II) To be present at the hearing, unless the defendant waives
19 that right.
- 20 (III) To present evidence at the hearing.
- 21 (IV) To question persons presenting evidence supporting
22 involuntary medication.
- 23 (V) To make reasonable requests for attendance of witnesses
24 on the defendant's behalf.
- 25 (VI) To a hearing conducted in an impartial and informal
26 manner.
- 27 (ii) If the administrative law judge determines that the defendant
28 either meets the criteria specified in subclause (I) of clause (i) of
29 subparagraph (B), or meets the criteria specified in subclause (II)
30 of clause (i) of subparagraph (B), then antipsychotic medication
31 may continue to be administered to the defendant for the 21-day
32 certification period. Concurrently with the treating psychiatrist's
33 certification, the treating psychiatrist shall file a copy of the
34 certification and a petition with the court for issuance of an order
35 to administer antipsychotic medication beyond the 21-day
36 certification period. For purposes of this subparagraph, the treating
37 psychiatrist shall not be required to pay or deposit any fee for the
38 filing of the petition or other document or paper related to the
39 petition.

1 (iii) If the administrative law judge disagrees with the
2 certification, medication may not be administered involuntarily
3 until the court determines that antipsychotic medication should be
4 administered pursuant to this section.

5 (iv) The court shall provide notice to the prosecuting attorney
6 and to the attorney representing the defendant, and shall hold a
7 hearing, no later than 18 days from the date of the certification, to
8 determine whether antipsychotic medication should be ordered
9 beyond the certification period.

10 (v) If, as a result of the hearing, the court determines that
11 antipsychotic medication should be administered beyond the
12 certification period, the court shall issue an order authorizing the
13 administration of that medication.

14 (vi) The court shall render its decision on the petition and issue
15 its order no later than three calendar days after the hearing and, in
16 any event, no later than the expiration of the 21-day certification
17 period.

18 (vii) If the administrative law judge upholds the certification
19 pursuant to clause (ii), the court may, for a period not to exceed
20 14 days, extend the certification and continue the hearing pursuant
21 to stipulation between the parties or upon a finding of good cause.
22 In determining good cause, the court may review the petition filed
23 with the court, the administrative law judge's order, and any
24 additional testimony needed by the court to determine if it is
25 appropriate to continue medication beyond the 21-day certification
26 and for a period of up to 14 days.

27 (viii) The district attorney, county counsel, or representative of
28 ~~any~~ a facility where a defendant found incompetent to stand trial
29 is committed may petition the court for an order to administer
30 involuntary medication pursuant to the criteria set forth in
31 subclauses (II) and (III) of clause (i) of subparagraph (B). The
32 order is reviewable as provided in paragraph (7).

33 (3) When the court orders that the defendant be committed to
34 the State Department of State Hospitals or other public or private
35 treatment facility, the court shall provide copies of the following
36 documents prior to the admission of the defendant to the State
37 Department of State Hospitals or other treatment facility where
38 the defendant is to be committed:

39 (A) The commitment order, including a specification of the
40 charges.

1 (B) A computation or statement setting forth the maximum term
2 of commitment in accordance with subdivision (c).

3 (C) A computation or statement setting forth the amount of
4 credit for time served, if any, to be deducted from the maximum
5 term of commitment.

6 (D) State summary criminal history information.

7 (E) ~~Any arrest~~ *Arrest* reports prepared by the police department
8 or other law enforcement agency.

9 (F) ~~Any court-ordered~~ *Court-ordered* psychiatric examination
10 or evaluation reports.

11 (G) The community program director's placement
12 recommendation report.

13 (H) Records of ~~any a~~ finding of mental incompetence pursuant
14 to this chapter arising out of a complaint charging a felony offense
15 specified in Section 290 or ~~any a~~ pending Section 1368 proceeding
16 arising out of a charge of a Section 290 offense.

17 (I) ~~Any medical~~ *Medical* records.

18 (4) When the defendant is committed to a treatment facility
19 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
20 court makes the findings specified in clause (ii) or (iii) of
21 subparagraph (B) of paragraph (1) to assign the defendant to a
22 treatment facility other than a state hospital or other secure
23 treatment facility, the court shall order that notice be given to the
24 appropriate law enforcement agency or agencies having local
25 jurisdiction at the site of the placement facility of any finding of
26 mental incompetence pursuant to this chapter arising out of a
27 charge of a Section 290 offense.

28 (5) When directing that the defendant be confined in a state
29 hospital pursuant to this subdivision, the court shall commit the
30 patient to the State Department of State Hospitals.

31 (6) (A) If the defendant is committed or transferred to the State
32 Department of State Hospitals pursuant to this section, the court
33 may, upon receiving the written recommendation of the medical
34 director of the state hospital and the community program director
35 that the defendant be transferred to a public or private treatment
36 facility approved by the community program director, order the
37 defendant transferred to that facility. If the defendant is committed
38 or transferred to a public or private treatment facility approved by
39 the community program director, the court may, upon receiving
40 the written recommendation of the community program director,

1 transfer the defendant to the State Department of State Hospitals
2 or to another public or private treatment facility approved by the
3 community program director. In the event of dismissal of the
4 criminal charges before the defendant recovers competence, the
5 person shall be subject to the applicable provisions of the
6 Lanterman-Petris-Short Act (Part 1 (commencing with Section
7 5000) of Division 5 of the Welfare and Institutions Code). If either
8 the defendant or the prosecutor chooses to contest either kind of
9 order of transfer, a petition may be filed in the court for a hearing,
10 which shall be held if the court determines that sufficient grounds
11 exist. At the hearing, the prosecuting attorney or the defendant
12 may present evidence bearing on the order of transfer. The court
13 shall use the same standards as are used in conducting probation
14 revocation hearings pursuant to Section 1203.2.

15 Prior to making an order for transfer under this section, the court
16 shall notify the defendant, the attorney of record for the defendant,
17 the prosecuting attorney, and the community program director or
18 a designee.

19 (B) If the defendant is initially committed to the State
20 Department of State Hospitals or secure treatment facility pursuant
21 to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is
22 subsequently transferred to any other facility, copies of the
23 documents specified in paragraph (3) shall be taken with the
24 defendant to each subsequent facility to which the defendant is
25 transferred. The transferring facility shall also notify the appropriate
26 law enforcement agency or agencies having local jurisdiction at
27 the site of the new facility that the defendant is a person subject
28 to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

29 (7) (A) An order by the court authorizing involuntary
30 medication of the defendant shall be valid for no more than one
31 year. The court shall review the order at the time of the review of
32 the initial report and the six-month progress reports pursuant to
33 paragraph (1) of subdivision (b) to determine if the grounds for
34 the authorization remain. In the review, the court shall consider
35 the reports of the treating psychiatrist or psychiatrists and the
36 defendant's patients' rights advocate or attorney. The court may
37 require testimony from the treating psychiatrist or psychiatrists
38 and the patients' rights advocate or attorney, if necessary. The
39 court may continue the order authorizing involuntary medication

1 for up to another six months, or vacate the order, or make any other
2 appropriate order.

3 (B) Within 60 days before the expiration of the one-year
4 involuntary medication order, the district attorney, county counsel,
5 or representative of any facility where a defendant found
6 incompetent to stand trial is committed may petition the committing
7 court for a renewal, subject to the same conditions and
8 requirements as in subparagraph (A). The petition shall include
9 the basis for involuntary medication set forth in clause (i) of
10 subparagraph (B) of paragraph (2). Notice of the petition shall be
11 provided to the defendant, the defendant's attorney, and the district
12 attorney. The court shall hear and determine whether the defendant
13 continues to meet the criteria set forth in clause (i) of subparagraph
14 (B) of paragraph (2). The hearing on any petition to renew an order
15 for involuntary medication shall be conducted prior to the
16 expiration of the current order.

17 (8) *For purposes of subparagraph (D) of paragraph (2) and*
18 *paragraph (7), if the treating psychiatrist determines that there is*
19 *a need, based on preserving his or her rapport with the patient or*
20 *preventing harm, the treating psychiatrist may request that the*
21 *facility medical director designate another psychiatrist to act in*
22 *the place of the treating psychiatrist. If the medical director of the*
23 *facility designates another psychiatrist to act pursuant to this*
24 *paragraph, the treating psychiatrist shall brief the acting*
25 *psychiatrist of the relevant facts of the case and the acting*
26 *psychiatrist shall examine the patient prior to the hearing.*

27 (b) (1) Within 90 days of a commitment made pursuant to
28 subdivision (a), the medical director of the state hospital or other
29 treatment facility to which the defendant is confined shall make a
30 written report to the court and the community program director
31 for the county or region of commitment, or a designee, concerning
32 the defendant's progress toward recovery of mental competence
33 and whether the administration of antipsychotic medication remains
34 necessary. If the defendant is on outpatient status, the outpatient
35 treatment staff shall make a written report to the community
36 program director concerning the defendant's progress toward
37 recovery of mental competence. Within 90 days of placement on
38 outpatient status, the community program director shall report to
39 the court on this matter. If the defendant has not recovered mental
40 competence, but the report discloses a substantial likelihood that

1 the defendant will regain mental competence in the foreseeable
2 future, the defendant shall remain in the state hospital or other
3 treatment facility or on outpatient status. Thereafter, at six-month
4 intervals or until the defendant becomes mentally competent, if
5 the defendant is confined in a treatment facility, the medical
6 director of the hospital or person in charge of the facility shall
7 report in writing to the court and the community program director
8 or a designee regarding the defendant's progress toward recovery
9 of mental competence and whether the administration of
10 antipsychotic medication remains necessary. If the defendant is
11 on outpatient status, after the initial 90-day report, the outpatient
12 treatment staff shall report to the community program director on
13 the defendant's progress toward recovery, and the community
14 program director shall report to the court on this matter at
15 six-month intervals. A copy of these reports shall be provided to
16 the prosecutor and defense counsel by the court.

17 (A) If the report indicates that there is no substantial likelihood
18 that the defendant will regain mental competence in the foreseeable
19 future, the committing court shall order the defendant to be returned
20 to the court for proceedings pursuant to paragraph (2) of
21 subdivision (c) no later than 10 days following receipt of the report.
22 The court shall transmit a copy of its order to the community
23 program director or a designee.

24 (B) If the report indicates that there is no substantial likelihood
25 that the defendant will regain mental competence in the foreseeable
26 future, the medical director of the state hospital or other treatment
27 facility to which the defendant is confined shall do both of the
28 following:

29 (i) Promptly notify and provide a copy of the report to the
30 defense counsel and the district attorney.

31 (ii) Provide a separate notification, in compliance with
32 applicable privacy laws, to the committing county's sheriff that
33 transportation will be needed for the patient.

34 (2) If the court has issued an order authorizing the treating
35 facility to involuntarily administer antipsychotic medication to the
36 defendant, the reports made pursuant to paragraph (1) concerning
37 the defendant's progress toward regaining competency shall also
38 consider the issue of involuntary medication. Each report shall
39 include, but is not limited to, all of the following:

1 (A) Whether or not the defendant has the capacity to make
2 decisions concerning antipsychotic medication.

3 (B) If the defendant lacks capacity to make decisions concerning
4 antipsychotic medication, whether the defendant risks serious harm
5 to his or her physical or mental health if not treated with
6 antipsychotic medication.

7 (C) Whether or not the defendant presents a danger to others if
8 he or she is not treated with antipsychotic medication.

9 (D) Whether the defendant has a mental illness for which
10 medications are the only effective treatment.

11 (E) Whether there are any side effects from the medication
12 currently being experienced by the defendant that would interfere
13 with the defendant's ability to collaborate with counsel.

14 (F) Whether there are any effective alternatives to medication.

15 (G) How quickly the medication is likely to bring the defendant
16 to competency.

17 (H) Whether the treatment plan includes methods other than
18 medication to restore the defendant to competency.

19 (I) A statement, if applicable, that no medication is likely to
20 restore the defendant to competency.

21 (3) After reviewing the reports, the court shall determine whether
22 or not grounds for the order authorizing involuntary administration
23 of antipsychotic medication still exist and shall do one of the
24 following:

25 (A) If the original grounds for involuntary medication still exist,
26 the order authorizing the treating facility to involuntarily administer
27 antipsychotic medication to the defendant shall remain in effect.

28 (B) If the original grounds for involuntary medication no longer
29 exist, and there is no other basis for involuntary administration of
30 antipsychotic medication, the order for the involuntary
31 administration of antipsychotic medication shall be vacated.

32 (C) If the original grounds for involuntary medication no longer
33 exist, and the report states that there is another basis for involuntary
34 administration of antipsychotic medication, the court shall set a
35 hearing within 21 days to determine whether the order for the
36 involuntary administration of antipsychotic medication shall be
37 vacated or whether a new order for the involuntary administration
38 of antipsychotic medication shall be issued. The hearing shall
39 proceed as set forth in subparagraph (B) of paragraph (2) of
40 subdivision (a).

1 (4) Any defendant who has been committed or has been on
2 outpatient status for 18 months and is still hospitalized or on
3 outpatient status shall be returned to the committing court where
4 a hearing shall be held pursuant to the procedures set forth in
5 Section 1369. The court shall transmit a copy of its order to the
6 community program director or a designee.

7 (5) If it is determined by the court that no treatment for the
8 defendant's mental impairment is being conducted, the defendant
9 shall be returned to the committing court. The court shall transmit
10 a copy of its order to the community program director or a
11 designee.

12 (6) At each review by the court specified in this subdivision,
13 the court shall determine if the security level of housing and
14 treatment is appropriate and may make an order in accordance
15 with its determination. If the court determines that the defendant
16 shall continue to be treated in the state hospital or on an outpatient
17 basis, the court shall determine issues concerning administration
18 of antipsychotic medication, as set forth in subparagraph (B) of
19 paragraph (2) of subdivision (a).

20 (c) (1) At the end of three years from the date of commitment
21 or a period of commitment equal to the maximum term of
22 imprisonment provided by law for the most serious offense charged
23 in the information, indictment, or misdemeanor complaint, or the
24 maximum term of imprisonment provided by law for a violation
25 of probation or mandatory supervision, whichever is shorter, but
26 no later than 90 days prior to the expiration of the defendant's term
27 of commitment, a defendant who has not recovered mental
28 competence shall be returned to the committing court. The court
29 shall notify the community program director or a designee of the
30 return and of any resulting court orders.

31 (2) Whenever ~~any~~ a defendant is returned to the court pursuant
32 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
33 subdivision and it appears to the court that the defendant is gravely
34 disabled, as defined in subparagraph (B) of paragraph (1) of
35 subdivision (h) of Section 5008 of the Welfare and Institutions
36 Code, the court shall order the conservatorship investigator of the
37 county of commitment of the defendant to initiate conservatorship
38 proceedings for the defendant pursuant to Chapter 3 (commencing
39 with Section 5350) of Part 1 of Division 5 of the Welfare and
40 Institutions Code. ~~Any hearings~~ *Hearings* required in the

conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a designee, the sheriff and the district attorney of the county in which criminal charges are pending, and the defendant's counsel of record. The court shall notify the community program director or a designee, the sheriff and district attorney of the county in which criminal charges are pending, and the defendant's counsel of record of the outcome of the conservatorship proceedings.

(3) If a change in placement is proposed for a defendant who is committed pursuant to subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall provide notice and an opportunity to be heard with respect to the proposed placement of the defendant to the sheriff and the district attorney of the county in which the criminal charges or revocation proceedings are pending.

(4) If the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(d) With the exception of proceedings alleging a violation of mandatory supervision, the criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee. In a proceeding alleging a violation of mandatory supervision, if the person is not placed under a conservatorship as described in paragraph (2) of subdivision (c), or if a conservatorship is terminated, the court shall reinstate mandatory supervision and may modify the terms and conditions of supervision to include appropriate mental health treatment or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant.

(e) If the criminal action against the defendant is dismissed, the defendant shall be released from ~~any~~ commitment ordered under this section, but without prejudice to the initiation of any proceedings that may be appropriate under the

Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

(f) As used in this chapter, “community program director” means the person, agency, or entity designated by the State Department of State Hospitals pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, “secure treatment facility” shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

(h) Nothing in this section shall preclude a defendant from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing a treatment facility or outpatient program to involuntarily administer antipsychotic medication to a person being treated as incompetent to stand trial.

~~SECTION 1. Section 1370 of the Penal Code is amended to read:~~

~~1370. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged or hearing on the alleged violation shall proceed, and judgment may be pronounced.~~

~~(B) If the defendant is found mentally incompetent, the trial, the hearing on the alleged violation, or the judgment shall be suspended until the person becomes mentally competent.~~

~~(i) In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, as directed by the State Department of State Hospitals, or to any other available public or private treatment facility, including a local county jail treatment facility or the community-based residential treatment system established pursuant to Article 1 (commencing with Section 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and Institutions Code if the facility has a secured perimeter or a locked and controlled treatment facility, approved by the community program director that will promote the defendant’s speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.~~

~~(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital, as directed by the State Department of State Hospitals, or other secure treatment facility for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.~~

~~(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, as directed by the State Department of State Hospitals, unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.~~

~~(iv) The clerk of the court shall notify the Department of Justice in writing of a finding of mental incompetency with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.~~

~~(C) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.~~

1 ~~(D) A defendant charged with a violent felony may not be~~
2 ~~delivered to a state hospital or treatment facility pursuant to this~~
3 ~~subdivision unless the state hospital or treatment facility has a~~
4 ~~secured perimeter or a locked and controlled treatment facility,~~
5 ~~and the judge determines that the public safety will be protected.~~

6 ~~(E) For purposes of this paragraph, “violent felony” means an~~
7 ~~offense specified in subdivision (c) of Section 667.5.~~

8 ~~(F) A defendant charged with a violent felony may be placed~~
9 ~~on outpatient status, as specified in Section 1600, only if the court~~
10 ~~finds that the placement will not pose a danger to the health or~~
11 ~~safety of others. If the court places a defendant charged with a~~
12 ~~violent felony on outpatient status, as specified in Section 1600,~~
13 ~~the court shall serve copies of the placement order on defense~~
14 ~~counsel, the sheriff in the county where the defendant will be~~
15 ~~placed, and the district attorney for the county in which the violent~~
16 ~~felony charges are pending against the defendant.~~

17 ~~(2) Prior to making the order directing that the defendant be~~
18 ~~committed to the State Department of State Hospitals or other~~
19 ~~treatment facility or placed on outpatient status, the court shall~~
20 ~~proceed as follows:~~

21 ~~(A) The court shall order the community program director or a~~
22 ~~designee to evaluate the defendant and to submit to the court within~~
23 ~~15 judicial days of the order a written recommendation as to~~
24 ~~whether the defendant should be required to undergo outpatient~~
25 ~~treatment, or be committed to the State Department of State~~
26 ~~Hospitals or to any other treatment facility. A person shall not be~~
27 ~~admitted to a state hospital or other treatment facility or placed on~~
28 ~~outpatient status under this section without having been evaluated~~
29 ~~by the community program director or a designee. The community~~
30 ~~program director or designee shall evaluate the appropriate~~
31 ~~placement for the defendant between the State Department of State~~
32 ~~Hospitals, a local county jail treatment facility, or the~~
33 ~~community-based residential treatment system based upon~~
34 ~~guidelines provided by the State Department of State Hospitals.~~
35 ~~If a local county jail treatment facility is selected, the State~~
36 ~~Department of State Hospitals shall provide treatment at the county~~
37 ~~jail treatment facility and reimburse the county jail treatment~~
38 ~~facility for the reasonable costs of the bed during the treatment. If~~
39 ~~the community-based residential treatment system is selected, the~~
40 ~~State Department of State Hospitals shall provide reimbursement~~

1 to the community-based residential treatment system for the cost
2 of treatment as negotiated with the State Department of State
3 Hospitals. The six-month limitation in Section 1369.1 shall not
4 apply to individuals deemed incompetent to stand trial who are
5 being treated to restore competency within a county jail treatment
6 facility pursuant to this section.

7 (B) The court shall hear and determine whether the defendant
8 lacks capacity to make decisions regarding the administration of
9 antipsychotic medication. The court shall consider opinions in the
10 reports prepared pursuant to subdivision (a) of Section 1369, as
11 applicable to the issue of whether the defendant lacks capacity to
12 make decisions regarding the administration of antipsychotic
13 medication, and shall proceed as follows:

14 (i) The court shall hear and determine whether any of the
15 following is true:

16 (I) The defendant lacks capacity to make decisions regarding
17 antipsychotic medication, the defendant's mental disorder requires
18 medical treatment with antipsychotic medication, and, if the
19 defendant's mental disorder is not treated with antipsychotic
20 medication, it is probable that serious harm to the physical or
21 mental health of the patient will result. Probability of serious harm
22 to the physical or mental health of the defendant requires evidence
23 that the defendant is presently suffering adverse effects to his or
24 her physical or mental health, or the defendant has previously
25 suffered these effects as a result of a mental disorder and his or
26 her condition is substantially deteriorating. The fact that a
27 defendant has a diagnosis of a mental disorder does not alone
28 establish probability of serious harm to the physical or mental
29 health of the defendant.

30 (II) The defendant is a danger to others, in that the defendant
31 has inflicted, attempted to inflict, or made a serious threat of
32 inflicting substantial physical harm on another while in custody;
33 or the defendant had inflicted, attempted to inflict, or made a
34 serious threat of inflicting substantial physical harm on another
35 that resulted in his or her being taken into custody, and the
36 defendant presents, as a result of mental disorder or mental defect,
37 a demonstrated danger of inflicting substantial physical harm on
38 others. Demonstrated danger may be based on an assessment of
39 the defendant's present mental condition, including a consideration
40 of past behavior of the defendant within six years prior to the time

1 the defendant last attempted to inflict, inflicted, or threatened to
2 inflict substantial physical harm on another, and other relevant
3 evidence.

4 (III) The people have charged the defendant with a serious crime
5 against the person or property, involuntary administration of
6 antipsychotic medication is substantially likely to render the
7 defendant competent to stand trial, the medication is unlikely to
8 have side effects that interfere with the defendant's ability to
9 understand the nature of the criminal proceedings or to assist
10 counsel in the conduct of a defense in a reasonable manner, less
11 intrusive treatments are unlikely to have substantially the same
12 results, and antipsychotic medication is in the patient's best medical
13 interest in light of his or her medical condition.

14 (ii) If the court finds any of the conditions described in clause
15 (i) to be true, the court shall issue an order authorizing involuntary
16 administration of antipsychotic medication to the defendant when
17 and as prescribed by the defendant's treating psychiatrist at any
18 facility housing the defendant for purposes of this chapter. The
19 order shall be valid for no more than one year, pursuant to
20 subparagraph (A) of paragraph (7). The court shall not order
21 involuntary administration of psychotropic medication under
22 subclause (III) of clause (i) unless the court has first found that the
23 defendant does not meet the criteria for involuntary administration
24 of psychotropic medication under subclause (I) of clause (i) and
25 does not meet the criteria under subclause (II) of clause (i).

26 (iii) In all cases, the treating hospital, facility, or program may
27 administer medically appropriate antipsychotic medication
28 prescribed by a psychiatrist in an emergency as described in
29 subdivision (m) of Section 5008 of the Welfare and Institutions
30 Code.

31 (iv) If the court has determined that the defendant has the
32 capacity to make decisions regarding antipsychotic medication,
33 and if the defendant, with advice of his or her counsel, consents,
34 the court order of commitment shall include confirmation that
35 antipsychotic medication may be given to the defendant as
36 prescribed by a treating psychiatrist pursuant to the defendant's
37 consent. The commitment order shall also indicate that, if the
38 defendant withdraws consent for antipsychotic medication, after
39 the treating psychiatrist complies with the provisions of
40 subparagraph (C), the defendant shall be returned to court for a

1 hearing in accordance with subparagraphs (C) and (D) regarding
2 whether antipsychotic medication shall be administered
3 involuntarily.

4 (v) If the court has determined that the defendant has the
5 capacity to make decisions regarding antipsychotic medication
6 and if the defendant, with advice from his or her counsel, does not
7 consent, the court order for commitment shall indicate that, after
8 the treating psychiatrist complies with the provisions of
9 subparagraph (C), the defendant shall be returned to court for a
10 hearing in accordance with subparagraphs (C) and (D) regarding
11 whether antipsychotic medication shall be administered
12 involuntarily.

13 (vi) A report made pursuant to paragraph (1) of subdivision (b)
14 shall include a description of antipsychotic medication administered
15 to the defendant and its effects and side effects, including effects
16 on the defendant's appearance or behavior that would affect the
17 defendant's ability to understand the nature of the criminal
18 proceedings or to assist counsel in the conduct of a defense in a
19 reasonable manner. During the time the defendant is confined in
20 a state hospital or other treatment facility or placed on outpatient
21 status, either the defendant or the people may request that the court
22 review any order made pursuant to this subdivision. The defendant,
23 to the same extent enjoyed by other patients in the state hospital
24 or other treatment facility, shall have the right to contact the
25 patients' rights advocate regarding his or her rights under this
26 section.

27 (C) If the defendant consented to antipsychotic medication as
28 described in clause (iv) of subparagraph (B), but subsequently
29 withdraws his or her consent, or, if involuntary antipsychotic
30 medication was not ordered pursuant to clause (v) of subparagraph
31 (B), and the treating psychiatrist determines that antipsychotic
32 medication has become medically necessary and appropriate, the
33 treating psychiatrist shall make efforts to obtain informed consent
34 from the defendant for antipsychotic medication. If informed
35 consent is not obtained from the defendant, and the treating
36 psychiatrist is of the opinion that the defendant lacks capacity to
37 make decisions regarding antipsychotic medication based on the
38 conditions described in subclause (I) or (II) of clause (i) of
39 subparagraph (B), the treating psychiatrist shall certify whether
40 the lack of capacity and any applicable conditions described above

1 exist. That certification shall contain an assessment of the current
2 mental status of the defendant and the opinion of the treating
3 psychiatrist that involuntary antipsychotic medication has become
4 medically necessary and appropriate.

5 (D) (i) If the treating psychiatrist certifies that antipsychotic
6 medication has become medically necessary and appropriate
7 pursuant to subparagraph (C), antipsychotic medication may be
8 administered to the defendant for not more than 21 days, provided,
9 however, that, within 72 hours of the certification, the defendant
10 is provided a medication review hearing before an administrative
11 law judge to be conducted at the facility where the defendant is
12 receiving treatment. The treating psychiatrist shall present the case
13 for the certification for involuntary treatment and the defendant
14 shall be represented by an attorney or a patients' rights advocate.
15 The attorney or patients' rights advocate shall be appointed to meet
16 with the defendant no later than one day prior to the medication
17 review hearing to review the defendant's rights at the medication
18 review hearing, discuss the process, answer questions or concerns
19 regarding involuntary medication or the hearing, assist the
20 defendant in preparing for the hearing and advocating for his or
21 her interests at the hearing, review the panel's final determination
22 following the hearing, advise the defendant of his or her right to
23 judicial review of the panel's decision, and provide the defendant
24 with referral information for legal advice on the subject. The
25 defendant shall also have the following rights with respect to the
26 medication review hearing:

27 (I) To be given timely access to the defendant's records.

28 (II) To be present at the hearing, unless the defendant waives
29 that right.

30 (III) To present evidence at the hearing.

31 (IV) To question persons presenting evidence supporting
32 involuntary medication.

33 (V) To make reasonable requests for attendance of witnesses
34 on the defendant's behalf.

35 (VI) To a hearing conducted in an impartial and informal
36 manner.

37 (ii) If the administrative law judge determines that the defendant
38 either meets the criteria specified in subclause (I) of clause (i) of
39 subparagraph (B), or meets the criteria specified in subclause (II)
40 of clause (i) of subparagraph (B), then antipsychotic medication

1 may continue to be administered to the defendant for the 21-day
2 certification period. Concurrently with the treating psychiatrist's
3 certification, the treating psychiatrist shall file a copy of the
4 certification and a petition with the court for issuance of an order
5 to administer antipsychotic medication beyond the 21-day
6 certification period. For purposes of this subparagraph, the treating
7 psychiatrist shall not be required to pay or deposit any fee for the
8 filing of the petition or other document or paper related to the
9 petition.

10 (iii) If the administrative law judge disagrees with the
11 certification, medication may not be administered involuntarily
12 until the court determines that antipsychotic medication should be
13 administered pursuant to this section.

14 (iv) The court shall provide notice to the prosecuting attorney
15 and to the attorney representing the defendant, and shall hold a
16 hearing, no later than 18 days from the date of the certification, to
17 determine whether antipsychotic medication should be ordered
18 beyond the certification period.

19 (v) If, as a result of the hearing, the court determines that
20 antipsychotic medication should be administered beyond the
21 certification period, the court shall issue an order authorizing the
22 administration of that medication.

23 (vi) The court shall render its decision on the petition and issue
24 its order no later than three calendar days after the hearing and, in
25 any event, no later than the expiration of the 21-day certification
26 period.

27 (vii) If the administrative law judge upholds the certification
28 pursuant to clause (ii), the court may, for a period not to exceed
29 14 days, extend the certification and continue the hearing pursuant
30 to stipulation between the parties or upon a finding of good cause.
31 In determining good cause, the court may review the petition filed
32 with the court, the administrative law judge's order, and any
33 additional testimony needed by the court to determine if it is
34 appropriate to continue medication beyond the 21-day certification
35 and for a period of up to 14 days.

36 (viii) The district attorney, county counsel, or representative of
37 a facility where a defendant found incompetent to stand trial is
38 committed may petition the court for an order to administer
39 involuntary medication pursuant to the criteria set forth in

1 subclauses (II) and (III) of clause (i) of subparagraph (B). The
2 order is reviewable as provided in paragraph (7).

3 (3) ~~When the court orders that the defendant be committed to~~
4 ~~the State Department of State Hospitals or other public or private~~
5 ~~treatment facility, the court shall provide copies of the following~~
6 ~~documents prior to the admission of the defendant to the State~~
7 ~~Department of State Hospitals or other treatment facility where~~
8 ~~the defendant is to be committed:~~

9 (A) ~~The commitment order, including a specification of the~~
10 ~~charges.~~

11 (B) ~~A computation or statement setting forth the maximum term~~
12 ~~of commitment in accordance with subdivision (e).~~

13 (C) ~~A computation or statement setting forth the amount of~~
14 ~~credit for time served, if any, to be deducted from the maximum~~
15 ~~term of commitment.~~

16 (D) ~~State summary criminal history information.~~

17 (E) ~~Arrest reports prepared by the police department or other~~
18 ~~law enforcement agency.~~

19 (F) ~~Court-ordered psychiatric examination or evaluation reports.~~

20 (G) ~~The community program director's placement~~
21 ~~recommendation report.~~

22 (H) ~~Records of a finding of mental incompetence pursuant to~~
23 ~~this chapter arising out of a complaint charging a felony offense~~
24 ~~specified in Section 290 or a pending Section 1368 proceeding~~
25 ~~arising out of a charge of a Section 290 offense.~~

26 (I) ~~Medical records.~~

27 (4) ~~When the defendant is committed to a treatment facility~~
28 ~~pursuant to clause (i) of subparagraph (B) of paragraph (1) or the~~
29 ~~court makes the findings specified in clause (ii) or (iii) of~~
30 ~~subparagraph (B) of paragraph (1) to assign the defendant to a~~
31 ~~treatment facility other than a state hospital or other secure~~
32 ~~treatment facility, the court shall order that notice be given to the~~
33 ~~appropriate law enforcement agency or agencies having local~~
34 ~~jurisdiction at the site of the placement facility of any finding of~~
35 ~~mental incompetence pursuant to this chapter arising out of a~~
36 ~~charge of a Section 290 offense.~~

37 (5) ~~When directing that the defendant be confined in a state~~
38 ~~hospital pursuant to this subdivision, the court shall commit the~~
39 ~~patient to the State Department of State Hospitals.~~

~~(6) (A) If the defendant is committed or transferred to the State Department of State Hospitals pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, transfer the defendant to the State Department of State Hospitals or to another public or private treatment facility approved by the community program director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). If either the defendant or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.~~

~~Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.~~

~~(B) If the defendant is initially committed to the State Department of State Hospitals or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).~~

~~(7) (A) An order by the court authorizing involuntary medication of the defendant shall be valid for no more than one~~

1 year. The court shall review the order at the time of the review of
2 the initial report and the six-month progress reports pursuant to
3 paragraph (1) of subdivision (b) to determine if the grounds for
4 the authorization remain. In the review, the court shall consider
5 the reports of the treating psychiatrist or psychiatrists and the
6 defendant's patients' rights advocate or attorney. The court may
7 require testimony from the treating psychiatrist and the patients'
8 rights advocate or attorney, if necessary. The court may continue
9 the order authorizing involuntary medication for up to another six
10 months, or vacate the order, or make any other appropriate order.

11 (B) Within 60 days before the expiration of the one-year
12 involuntary medication order, the district attorney, county counsel,
13 or representative of any facility where a defendant found
14 incompetent to stand trial is committed may petition the committing
15 court for a renewal, subject to the same conditions and
16 requirements as in subparagraph (A). The petition shall include
17 the basis for involuntary medication set forth in clause (i) of
18 subparagraph (B) of paragraph (2). Notice of the petition shall be
19 provided to the defendant, the defendant's attorney, and the district
20 attorney. The court shall hear and determine whether the defendant
21 continues to meet the criteria set forth in clause (i) of subparagraph
22 (B) of paragraph (2). The hearing on any petition to renew an order
23 for involuntary medication shall be conducted prior to the
24 expiration of the current order.

25 (8) For purposes of subparagraph (D) of paragraph (2) and
26 paragraph (7), if the treating psychiatrist determines that there is
27 a need, based on preserving his or her rapport with the patient or
28 preventing harm, the treating psychiatrist may request that the
29 facility medical director designate another psychiatrist to act in
30 the place of the treating psychiatrist. If the medical director of the
31 facility designates another psychiatrist to act pursuant to this
32 paragraph, the treating psychiatrist shall brief the acting psychiatrist
33 of the relevant facts of the case and the acting psychiatrist shall
34 examine the patient prior to the hearing.

35 (b) (1) Within 90 days of a commitment made pursuant to
36 subdivision (a), the medical director of the state hospital or other
37 treatment facility to which the defendant is confined shall make a
38 written report to the court and the community program director
39 for the county or region of commitment, or a designee, concerning
40 the defendant's progress toward recovery of mental competence

1 and whether the administration of antipsychotic medication remains
2 necessary. If the defendant is on outpatient status, the outpatient
3 treatment staff shall make a written report to the community
4 program director concerning the defendant's progress toward
5 recovery of mental competence. Within 90 days of placement on
6 outpatient status, the community program director shall report to
7 the court on this matter. If the defendant has not recovered mental
8 competence, but the report discloses a substantial likelihood that
9 the defendant will regain mental competence in the foreseeable
10 future, the defendant shall remain in the state hospital or other
11 treatment facility or on outpatient status. Thereafter, at six-month
12 intervals or until the defendant becomes mentally competent, if
13 the defendant is confined in a treatment facility, the medical
14 director of the hospital or person in charge of the facility shall
15 report in writing to the court and the community program director
16 or a designee regarding the defendant's progress toward recovery
17 of mental competence and whether the administration of
18 antipsychotic medication remains necessary. If the defendant is
19 on outpatient status, after the initial 90-day report, the outpatient
20 treatment staff shall report to the community program director on
21 the defendant's progress toward recovery, and the community
22 program director shall report to the court on this matter at
23 six-month intervals. A copy of these reports shall be provided to
24 the prosecutor and defense counsel by the court.

25 (A) If the report indicates that there is no substantial likelihood
26 that the defendant will regain mental competence in the foreseeable
27 future, the committing court shall order the defendant to be returned
28 to the court for proceedings pursuant to paragraph (2) of
29 subdivision (c) no later than 10 days following receipt of the report.
30 The court shall transmit a copy of its order to the community
31 program director or a designee.

32 (B) If the report indicates that there is no substantial likelihood
33 that the defendant will regain mental competence in the foreseeable
34 future, the medical director of the state hospital or other treatment
35 facility to which the defendant is confined shall do both of the
36 following:

37 (i) Promptly notify and provide a copy of the report to the
38 defense counsel and the district attorney.

1 (ii) ~~Provide a separate notification, in compliance with~~
2 ~~applicable privacy laws, to the committing county's sheriff that~~
3 ~~transportation will be needed for the patient.~~

4 (2) ~~If the court has issued an order authorizing the treating~~
5 ~~facility to involuntarily administer antipsychotic medication to the~~
6 ~~defendant, the reports made pursuant to paragraph (1) concerning~~
7 ~~the defendant's progress toward regaining competency shall also~~
8 ~~consider the issue of involuntary medication. Each report shall~~
9 ~~include, but is not limited to, all of the following:~~

10 (A) ~~Whether or not the defendant has the capacity to make~~
11 ~~decisions concerning antipsychotic medication.~~

12 (B) ~~If the defendant lacks capacity to make decisions concerning~~
13 ~~antipsychotic medication, whether the defendant risks serious harm~~
14 ~~to his or her physical or mental health if not treated with~~
15 ~~antipsychotic medication.~~

16 (C) ~~Whether or not the defendant presents a danger to others if~~
17 ~~he or she is not treated with antipsychotic medication.~~

18 (D) ~~Whether the defendant has a mental illness for which~~
19 ~~medications are the only effective treatment.~~

20 (E) ~~Whether there are any side effects from the medication~~
21 ~~currently being experienced by the defendant that would interfere~~
22 ~~with the defendant's ability to collaborate with counsel.~~

23 (F) ~~Whether there are any effective alternatives to medication.~~

24 (G) ~~How quickly the medication is likely to bring the defendant~~
25 ~~to competency.~~

26 (H) ~~Whether the treatment plan includes methods other than~~
27 ~~medication to restore the defendant to competency.~~

28 (I) ~~A statement, if applicable, that no medication is likely to~~
29 ~~restore the defendant to competency.~~

30 (3) ~~After reviewing the reports, the court shall determine whether~~
31 ~~or not grounds for the order authorizing involuntary administration~~
32 ~~of antipsychotic medication still exist and shall do one of the~~
33 ~~following:~~

34 (A) ~~If the original grounds for involuntary medication still exist,~~
35 ~~the order authorizing the treating facility to involuntarily administer~~
36 ~~antipsychotic medication to the defendant shall remain in effect.~~

37 (B) ~~If the original grounds for involuntary medication no longer~~
38 ~~exist, and there is no other basis for involuntary administration of~~
39 ~~antipsychotic medication, the order for the involuntary~~
40 ~~administration of antipsychotic medication shall be vacated.~~

~~(C) If the original grounds for involuntary medication no longer exist, and the report states that there is another basis for involuntary administration of antipsychotic medication, the court shall set a hearing within 21 days to determine whether the order for the involuntary administration of antipsychotic medication shall be vacated or whether a new order for the involuntary administration of antipsychotic medication shall be issued. The hearing shall proceed as set forth in subparagraph (B) of paragraph (2) of subdivision (a).~~

~~(4) A defendant who has been committed or has been on outpatient status for 18 months and is still hospitalized or on outpatient status shall be returned to the committing court where a hearing shall be held pursuant to the procedures set forth in Section 1369. The court shall transmit a copy of its order to the community program director or a designee.~~

~~(5) If it is determined by the court that no treatment for the defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. The court shall transmit a copy of its order to the community program director or a designee.~~

~~(6) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination. If the court determines that the defendant shall continue to be treated in the state hospital or on an outpatient basis, the court shall determine issues concerning administration of antipsychotic medication, as set forth in subparagraph (B) of paragraph (2) of subdivision (a).~~

~~(e) (1) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, whichever is shorter, but no later than 90 days prior to the expiration of the defendant's term of commitment, a defendant who has not recovered mental competence shall be returned to the committing court. The court shall notify the community program director or a designee of the return and of any resulting court orders.~~

1 ~~(2) Whenever a defendant is returned to the court pursuant to~~
2 ~~paragraph (1) or (4) of subdivision (b) or paragraph (1) of this~~
3 ~~subdivision and it appears to the court that the defendant is gravely~~
4 ~~disabled, as defined in subparagraph (B) of paragraph (1) of~~
5 ~~subdivision (h) of Section 5008 of the Welfare and Institutions~~
6 ~~Code, the court shall order the conservatorship investigator of the~~
7 ~~county of commitment of the defendant to initiate conservatorship~~
8 ~~proceedings for the defendant pursuant to Chapter 3 (commencing~~
9 ~~with Section 5350) of Part 1 of Division 5 of the Welfare and~~
10 ~~Institutions Code. Hearings required in the conservatorship~~
11 ~~proceedings shall be held in the superior court in the county that~~
12 ~~ordered the commitment. The court shall transmit a copy of the~~
13 ~~order directing initiation of conservatorship proceedings to the~~
14 ~~community program director or a designee, the sheriff and the~~
15 ~~district attorney of the county in which criminal charges are~~
16 ~~pending, and the defendant's counsel of record. The court shall~~
17 ~~notify the community program director or a designee, the sheriff~~
18 ~~and district attorney of the county in which criminal charges are~~
19 ~~pending, and the defendant's counsel of record of the outcome of~~
20 ~~the conservatorship proceedings.~~

21 ~~(3) If a change in placement is proposed for a defendant who~~
22 ~~is committed pursuant to subparagraph (B) of paragraph (1) of~~
23 ~~subdivision (h) of Section 5008 of the Welfare and Institutions~~
24 ~~Code, the court shall provide notice and an opportunity to be heard~~
25 ~~with respect to the proposed placement of the defendant to the~~
26 ~~sheriff and the district attorney of the county in which the criminal~~
27 ~~charges or revocation proceedings are pending.~~

28 ~~(4) If the defendant is confined in a treatment facility, a copy~~
29 ~~of any report to the committing court regarding the defendant's~~
30 ~~progress toward recovery of mental competence shall be provided~~
31 ~~by the committing court to the prosecutor and to the defense~~
32 ~~counsel.~~

33 ~~(d) With the exception of proceedings alleging a violation of~~
34 ~~mandatory supervision, the criminal action remains subject to~~
35 ~~dismissal pursuant to Section 1385. If the criminal action is~~
36 ~~dismissed, the court shall transmit a copy of the order of dismissal~~
37 ~~to the community program director or a designee. In a proceeding~~
38 ~~alleging a violation of mandatory supervision, if the person is not~~
39 ~~placed under a conservatorship as described in paragraph (2) of~~
40 ~~subdivision (c), or if a conservatorship is terminated, the court~~

1 shall reinstate mandatory supervision and may modify the terms
2 and conditions of supervision to include appropriate mental health
3 treatment or refer the matter to a local mental health court, reentry
4 court, or other collaborative justice court available for improving
5 the mental health of the defendant.

6 (e) If the criminal action against the defendant is dismissed, the
7 defendant shall be released from commitment ordered under this
8 section, but without prejudice to the initiation of any proceedings
9 that may be appropriate under the Lanterman-Petris-Short Act
10 (Part 1 (commencing with Section 5000) of Division 5 of the
11 Welfare and Institutions Code).

12 (f) As used in this chapter, “community program director” means
13 the person, agency, or entity designated by the State Department
14 of State Hospitals pursuant to Section 1605 of this code and Section
15 4360 of the Welfare and Institutions Code.

16 (g) For the purpose of this section, “secure treatment facility”
17 shall not include, except for state mental hospitals, state
18 developmental centers, and correctional treatment facilities, any
19 facility licensed pursuant to Chapter 2 (commencing with Section
20 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
21 3.2 (commencing with Section 1569) of, Division 2 of the Health
22 and Safety Code, or any community board and care facility.

23 (h) Nothing in this section shall preclude a defendant from filing
24 a petition for habeas corpus to challenge the continuing validity
25 of an order authorizing a treatment facility or outpatient program
26 to involuntarily administer antipsychotic medication to a person
27 being treated as incompetent to stand trial.